

DONALD W. COOK, CSB 116666
ATTORNEY AT LAW
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
Telephone: (213) 252-9444
Fax: (213) 252-0091
E-mail: manncook@earthlink.net

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHELLE CHRISTINA RIVERA,

Plaintiff,

vs.

**COUNTY OF SAN BERNARDINO;
SAN BERNARDINO COUNTY
SHERIFF'S DEPARTMENT; and DOES
1 through 10, in both their individual and
official capacities,**

Defendants.

Case No.

**COMPLAINT FOR
DAMAGES**

1. 42 U.S.C. § 1983 - Fourth
Amendment -- False Arrest /
Malicious Prosecution
2. 42 U.S.C. § 1983 - Fourth
Amendment -- Excessive Force

DEMAND FOR JURY TRIAL

I. JURISDICTION.

1. Plaintiff's claims arise under 42 U.S.C. §1983. Accordingly, federal jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

2. Plaintiff's claims arise out of, *inter alia*, acts of the County of San Bernardino ("County") and San Bernardino County Sheriff's Department ("SBCSD"). Accordingly, venue is proper within the Eastern District of California.

///

///

1 **III. PARTIES.**

2 **A. Plaintiff.**

3 3. Plaintiff Michelle Christina Rivera is, and was at all times relevant hereto, an
4 adult resident of the State of San Bernardino.

5 **B. Defendants.**

6 4. Defendant County is a local governmental entity organized and existing under
7 the laws of the State of California. Defendant SBCSD is a public entity within the
8 meaning of California law, and is a San Bernardino County agency.

9 5. Plaintiff names the SBCSD as a separate defendant because there is
10 disagreement between the Ninth Circuit and the California Supreme Court on whether a
11 California sheriff is a state or county policymaker for § 1983 purposes. In *Brewster v.*
12 *Shasta County*, 275 F.2d 803 (9th Cir. 2001), and *Streit v. County of Los Angeles*, 236
13 F.3d 552, 559 (9th Cir. 2001), the Ninth Circuit held that California sheriffs are agents
14 of their employing county for § 1983 purposes. The California Supreme Court, in
15 *Venegas v. County of Los Angeles*, 32 Cal.4th 820, 828-39 (2004), disagreed with the
16 Ninth Circuit, holding instead that a California sheriff is not an agent of his employing
17 county for purposes of § 1983 liability. Should it ultimately be determined that *Venegas*
18 correctly states the law on this point, Plaintiff is informed and believes that County
19 Sheriff John McMahon will nevertheless remain a policymaker for his own department,
20 defendant SBCSD, and hence Plaintiff can prevail against McMahon in his official
21 capacity and defendant SBCSD notwithstanding *Venegas*.

22 6. Plaintiff is ignorant of the true names and capacities of defendants sued herein
23 as DOES, and therefore sues these defendants by fictitious names. Plaintiff will give
24 notice of their true names and capacities when ascertained. Plaintiff is informed and
25 believes and thereon alleges that defendant DOES are responsible in some manner for the
26
27
28

1 damages and injuries hereinafter complained of.

2 7. The complained of acts and omissions were performed by persons within the
3 course and scope of employment with their respective employers, County, and SBCSD.
4 All acts and omissions were under color of state law.

5 **IV. FACTS COMMON TO ALL CLAIMS.**

6 8. On April 27, 2015, shortly before or at about 10:00 p.m., SBCSD arrested
7 Plaintiff without a warrant and without probable cause to believe that she had committed
8 a crime. The arrest occurred in the vicinity of 39700 block of De Luz Road, in the County
9 of San Diego. The arrest followed a lengthy vehicle pursuit by law enforcement officials
10 from various agencies. Plaintiff was a passenger in a vehicle the officers were pursuing.
11 The pursuit began in Riverside County and continued into San Bernardino County before
12 terminating in San Diego County.
13

14 9. At the time of Plaintiff's arrest, she was subjected to a police dog attack that
15 caused Plaintiff serious injuries. Plaintiff is informed that SBCSD deputies were present
16 during the dog attack, were aware that the dog attack was without justification and in fact
17 was maliciously induced, but took no steps to prevent the dog attack or otherwise
18 intervene.
19

20 **FIRST CAUSE OF ACTION**

21 **(42 U.S.C. § 1983 – False Arrest / Malicious Prosecution – Fourth Amendment)**

22 10. Plaintiff restates and incorporates by reference the foregoing paragraphs as if
23 each paragraph was fully set forth herein.

24 11. SBCSD deputies unlawfully arrested Plaintiff, in violation of the Fourth
25 Amendment. Plaintiff is informed and believes that SBCSD deputies accused Plaintiff of
26 threatening violence against one or more SBCSD deputies when, in fact, the deputies
27 knew Plaintiff made no such threats, nor did she injure or attempt to injure any law
28

1 enforcement officer in any manner whatsoever.

2 12. As a result of the absence of evidence supporting the above false charge against
3 Plaintiff, all criminal proceedings against her were dismissed.

4 13. The conduct complained of occurred because of policies, practices and customs
5 of defendants County and SBCSD.

6 **SECOND CAUSE OF ACTION**

7 **(42 U.S.C. § 1983 – Excessive Force -- Fourth Amendment)**

8
9 14. Plaintiff restates and incorporates by reference the foregoing paragraphs as if
10 each paragraph was fully set forth herein.

11 15. During the course of her arrest Plaintiff was subjected to excessive and
12 unreasonable force, causing her serious and life threatening injuries.

13 16. Defendants County, SBCSD and DOES are liable because the wrongful acts
14 were pursuant to County and SBCSD policies, practices and/or customs, and/or were
15 directly inflicted by defendant DOES.

16 **PRAYER**

17
18 WHEREFORE, Plaintiff prays judgment as follows:

19 **On the First Cause of Action:**

20 17. That Plaintiff be awarded compensatory damages according to proof for her
21 wrongful arrest and prosecution;

22 18. Attorneys' fees and costs under 42 U.S.C. § 1988;

23 **On the Second Cause of Action:**

24 19. That Plaintiff be awarded compensatory damages according to proof for her
25 injuries proximately caused by the excessive force;

26 20. Attorneys' fees and costs under 42 U.S.C. § 1988;

27 ///
28

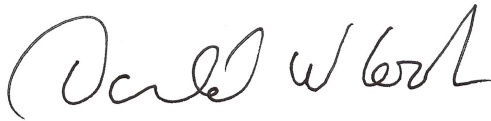
On All Causes of Action:

21. Costs of suit; and

22. Such other relief as the Court deems proper.

DATED: April 26, 2016

DONALD W. COOK
Attorney for Plaintiff


By  _____
Donald W. Cook

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

DATED: April 26, 2016

DONALD W. COOK
Attorney for Plaintiff

By 
Donald W. Cook